87-404

Supreme Court, U.S.
FILED
AUG 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

No. _____

MICKEY MANUEL,

Appellant,

v.

ROBERT HUDGENS, ZAFRITI GORDIN,
a/k/a TZAFRIR GORDIN,

Appellees,

and

JERRY PORTER, DAVID SHAKKOUR,
JOHN PETREE,

Appellees.

On Appeal From the Supreme Court
of the State of Georgia

JURISDICTIONAL STATEMENT

Mickey Manuel
In Pro Per
P. O. Box 50847
Palo Alto, Ca. 94303
(415) 323-5827

QUESTIONS PRESENTED

On May 22, 1980, appellant Mickey Manuel, entered into contract to sell property in the state of Georgia to appellees, Robert Hudgens and Tzafrir Gordin. On January 31, 1984, while still in debt to appellant, Hudgens and Gordin entered into contract to sell subject property to appellees, Jerry Porter, David Shakkour, and John Petree. Hudgens and Gordin defaulted in their payments of monthly installments to appellant. As a result, appellant notified appellees of the default and of appellant's election to accelerate the remaining balance due as per the provisions of the contract. Appellees' failure to pay the remaining debt prompted appellant to proceed with foreclosure action. To prevent appellant from performing foreclosure, appellees reoeived an ex parte tem-

porary restraining order from the Superior Court of DeKalb County, Georgia on February 21, 1986. On March 13, 1986, appellant filed Answer Cross-Complaint and Motion For Summary Judgment. After the temporary restraining order expired, appellant performed foreclosure on subject property on April 1, 1986. On April 3, 1986, appellees received an interlocutory injunction from the Superior Court of DeKalb County restricting repossessory action by appellant. Appellant filed Deed Under Power of Sale on April 29, 1986. On this same date, appellant mailed notification of the April 1, 1986 foreclosure to Porter. On June 12, 1986, appellant was found in contempt of court by the Superior Court of DeKalb County, Georgia on the grounds that his performance of foreclosure on April 1, 1986 and filing of related fore-

closure papers with the DeKalb county clerk were in violation of the Court's orders. The questions presented in this case are:

1. Whether the lack of adjudication on appellant's Answer Cross-Complaint and Motion For Summary Judgment violates his rights to due process and equal protection of the laws under the Fifth Amendment and Fourteenth Amendment of the United States Constitution.

2. Whether the issues in appellant's Answer Cross-Complaint and Motion For Summary Judgement, and all that they entail, are issues which need to be adjudicated.

Whether appellant should have been found in contempt of court when he performed foreclosure on April 1, 1986 and filed Deed Under Power of Sale.

4. Whether the contempt of court

order violates appellant's rights to due process of the law and equal protection of the laws under the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States.

5. Whether April 1, 1986 foreclosure and Deed Under Power of Sale were performed legally, and as a result, are binding.

6. Whether the court was cooperating with appellees under color of law to deprive appellant of his constitutional rights.

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No. _____

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ROBERT HUDGENS, ZAFRITI GORDIN,

a/k/a TZAFRIR GORDIN,

Appellees,

and

JERRY PORTER, DAVID SHAKKOUR,

JOHN PETREE,

Appellees

On Appeal From the Supreme Court

of the State of Georgia

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The judgment of the Supreme Court of Georgia is unreported. The order rendered by the Court of Appeals of the State of Georgia is unreported. The orders issued by the Superior Court of DeKalb County, Georgia are unreported. Each of the foregoing are reprinted in the Appendixes attached hereto.

JURISDICTION

This is an appeal from a final judgment entered pursuant to the decision of the Supreme Court of Georgia affirming appellant to be in contempt of court for violating orders issued by the Superior Court of DeKalb County. Appellant challenged the constitutionality and jurisdiction of the contempt order by way of appeal to the Court of Appeals of the State of Georgia and before the Supreme

Court of Georgia. Appellant has drawn into question the validity of the Court's findings of fact supporting the contempt decision, and the order issued therefrom, on the grounds of their repugnancy to the Constitution and laws of the United States. The Supreme Court of Georgia rendered its Judgement on May 19, 1987. On June 18, 1987, appellant filed notice of appeal with the clerk of the Supreme Court of Georgia. This Court has jurisdiction of this appeal by virtue of 28 USC §1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides, in pertinent part:

"No person shall be * * * * deprived of life, liberty, or property, * * * ."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. (No State shall make or or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws.)"

42 U.S.C. § 1983 provides, in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, cus- or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. * * *"

STATEMENT OF THE CASE

On May 29, 1980, appellant entered into contract to sell real property located at 1910 Bixby Street, Atlanta, DeKalb County, Georgia, to appellees, Hudgens and Gordin. At the time of sale, appellant was issued a Deed To Secure Debt and promissory note against subject property, App. G and H, respectively, hereto attached. On January 31, 1984, while still in debt to appellant, Hudgens and Gordin entered into contract to sell subject property to appellees, Porter, Shakkour, and Petree.

As outlined in Deed To Secure Debt and promissory note, appellant was to receive monthly installments from Hudgens and Gordin (App. G, App. H). After failing to receive due monthly installments, appellant began his efforts to contact Hudgens and Gordin in order to notify

them of the default. Refer to App. I, a chart chronolizing installments paid by Hudgens and Gordin to appellant hereto attached. Unable to reach Hudgens or Gordin, appellant contacted Porter on August 26, 1985. Porter, in turn, contacted Gordin and on September 12, 1985, appellant received two installments. Appellant promptly returned them to Gordin stating they were insufficient to cure default. Up to this time, appellant had not received four installments and had doubts in receiving his September installment (App. I).

Appellant received a copy of Porter's September 23, 1985 letter to Gordin stating that Porter was going to pay the arrearages, hereto attached App. J.

On October 2, 1985, Gordin mailed two installments to appellant (one

installment post dated 27 days). Appellant returned the installments to Gordin stating they were insufficient to cure default. At this point in time, Hudgens and Gordin had defaulted on five installments (App. I).

Porter's attorney mailed a letter to appellant on January 8, 1986, stating his position as arbitrator between Hudgens and Gordin and appellant, hereto attached App. K.

Appellant telephoned Porter's attorney on January 22, 1986. He left message of a demand for full payment of all arrearages to be due immediately. If there was any disagreement by Hudgens or Gordin on the arrearages due, appellant left message that he would accept what Hudgens and Gordin claimed was in arrears only if proof of all previously paid installments were sent with the arrearage

payment--i.e., front and back copies of all installment checks allegedly cashed by appellant. This telephone message was followed up by written confirmation mailed by appellant on the same date, herein marked App. L.

On January 23, 1986, Porter's attorney mailed the requested documentation for the years of 1983, 1984, and 1985, and installment checks for the nine defaulted payments of 1985 and January 1986. Upon examination of the documents, appellant found that only eleven installments were made in 1983. Appellant also questioned why documentation for 1981 and 1982 were not sent (App. I).

Notification of default, of appellant's election to accelerate the remaining balance due, and of pending foreclosure publication was mailed to Porter's attorney on January 27, 1986 by

appellant, herein marked App. M. If Hudgens or Gordin had any disagreement upon the due accelerated amount stated in the letter, appellant stated that he would accept payment of what Hudgens and Gordin claimed was the correct amount if proof of all previously paid installments were sent with the accelerated payment.

Appellant wrote to Porter's attorney on February 12, 1986 questioning the absence of particular checks from the documents he had sent to appellant. Appellant mailed back to Gordin all of the installment checks sent to him since they were still insufficient to cure default. From the documentation sent by Porter's attorney on January 23, 1986, there were ten installments that were in default, not nine, as were sent by them. In this letter and in a letter written to

Gordin on the same date, appellant declared the property to still be in default, that foreclosure publication had begun, and that to prevent foreclosure, the accelerated balance was to be paid. As in the previous letters, appellant provided for any dissent to the accelerated amount due by putting the burden of proof on Hudgens and Gordin. Said letters to Porter's attorney and Gordin are hereto attached App. N and App. O, respectively.

On February 21, 1986, the Superior Court of DeKalb County, Georgia signed and issued an ex parte temporary restraining order to appellees restricting appellant from proceeding in his foreclosure activities (App. D).

On March 13, 1986, appellant filed his Answer Cross-Complaint and Motion For Summary Judgement in the Superior Court

of DeKalb County, Georgia. In his complaint, appellant brought forth the following claims:

1. that all actions taken by appellant including, but not exclusive to, declaration of default, exercise of acceleration clause, and beginning of foreclosure proceedings, have been just and legal under the terms and conditions of Deed To Secure Debt and Georgia law (App. G). As a result, appellant should be allowed to exercise his contractual and legal rights;

2. that when Porter agreed to cure the default and then failed to perform, he was a contributor to Hudgens' and Gorain's negligence in fulfilling the terms of Deed To Secure Debt;

3. that relief from temporary restraining order be granted on the grounds that appellees willfully

misrepresented the issues in order to restrict appellant from exercising his rights as provided by law.

To this date, the court has yet to address any of the issues brought forth in appellant's complaint and has yet to adjudicate upon appellant's motion.

In accordance to Georgia Code Ann. §81A-165(b)(2), the temporary restraining order expired by its terms (30 days) on March 24, 1986.

On April 1, 1986, appellant flew to Atlanta, Georgia and performed foreclosure auction on subject property at the steps of the DeKalb County Court House. Hereto attached is App. P, official stamp of the clerk of the Superior Court of DeKalb County substantiating appellant's presence in said place and day of the foreclosure auction.

On April 3, 1986, appellees received

an interlocutory injunction from the Superior Court of DeKalb County further enjoining appellant from taking any further action in the foreclosure of subject property, hereto attached App. C.

A Deed Under Power of Sale was filed with the clerk of Superior Court of DeKalb County, Georgia by appellant on April 29, 1986, hereto attached App. Q.

On this same date, appellant notified Porter of the April 1, 1986 foreclosure, hereto attached App. R.

On June 12, 1986, the Superior Court of DeKalb County, Georgia held a hearing to adjudicate appellees' motion for contempt of court against appellant. Appellees contend that appellant's filing of Deed Under Power of Sale violates the interlocutory injunction ordered on April 3, 1986. They also contend that since said document is in violation of

the court order, it is invalid and has no effect. Appellant submitted his argument to the court and brought forth the following claims,

1. that the Court's temporary restraining order, which was issued and signed on February 21, 1986, expired on March 23, 1986 (App. D);

2. that appellant was under no court restraint when he performed foreclosure on April 1, 1986;

3. that the foreclosure was legal in its execution and application:

4. that the foreclosure liquidated all interest held by appellees in subject property;

5. that the interlocutory injunction has become moot since the property was foreclosed on prior to its issue;

6. that the Deed Under Power of Sale is a result of the foreclosure and

is a valid document.

The court rendered its judgement in favor of appellees based on its findings of fact that:

1. the court entered a restraining order which was signed and subsequently filed on March 10, 1986 thereby expiring by its terms on April 9, 1986;

2. appellant violated temporary restraining order when he performed foreclosure on April 1, 1986;

3. appellant violated interlocutory injunction when he filed Deed Under Power of Sale:

4. Deed Under Power of Sale is void and original Deed To Secure Debt is functus officio.

The court rendered its order as contained in App. E.

Appellant timely filed an appeal to the Court of Appeals of the State of

Georgia on June 23, 1986 claiming the following points:

1. that appellant's right to due process has been violated by the fact that the court has yet to adjudicate on his Answer Cross-Complaint and Motion For Summary Judgement submitted March 13, 1986;

2. that appellant's right to due process has been violated by the fact that the court has ruled on motions submitted by appellees which were filed subsequent to appellant's motion for summary judgment;

3. that the Court's temporary restraining order had already expired by its terms when appellant performed foreclosure on April 1, 1986, and thus he was within the law and not in contempt of court;

4. that interlocutory injunction

issued on April 3, 1986, is moot since appellant liquidated all of appellees' interests in subject property prior to its issue, and thus, the filed Deed Under Power of Sale is valid and not in contempt of any court order;

5. that appellant was not in contempt of court since the interlocutory injunction was moot;

6. that court has allowed incorrect information to be submitted and used as a basis for its decisions.

The Court of Appeals of the State of Georgia transferred the case to the Supreme Court of Georgia on the grounds that they lacked jurisdiction. Hereto attached, App. B, order of the Court of Appeals of the State of Georgia.

On May 19, 1987, the Supreme Court of Georgia affirmed the lower court's decision without opinion, hereto attached

App. A.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The questions presented on this appeal have never been passed upon by this Court. Not only do the issues involve federal and uniform code questions, but the issues also bring into question the application, or rather, lack of application of some of the most basic rights, privileges, and immunities provided by the Fifth and Fourteenth Amendments of the United States Constitution.

Among the most substantial federal constitutional issues raised by this case are the following:

1. At least four months had passed between the time appellant notified appellees of the default and the time appellant began to exercise his rights through the default clauses provided in his contract. Four months was plenty of

time for appellees to calculate the the figure due and cure the default especially when creditors often repossess or foreclose on contracts that have become delinquent by less a month as in the case of Wade v. Ford Motor Credit Co. 455 F, Supp. 147 (E.D.Mo. 1978). Unlike the repossession and conversion that took place in cited case, many of the issues are quite similar to the issues being raised here. Since time was of the essence, in the contract, appellant had both contractual and legal rights to accelerate the balance and to begin and perform foreclosure once the default had occurred. App. D, U.C.C. § 1-208, § 9-501 § 9-503, and § 9-504, Restatement, Second, Contracts § 235.

2. Appellant owns subject property absolutely upon his foreclosure as sup-

ported by Dieffenbach v. Attorney General of Vermont, 604 F. 2d 187 (C.A.Vt. 1979), but unlike appellant in cited case, Manuel agrees with the court's decision that once foreclosure is performed, it is absolute.

3. It is a twisted sort of justice when a debtor, who has defaulted on his contractual obligations, is able to get court orders restricting the creditor from exercising his constitutional, legal, and contractual rights which creditor would not have the right to do without debtor's breach of contract. An additional twist comes when the creditor tries to enforce some of his rights at a time when no court order is in effect and, in turn, the court finds him in contempt. It is understandable how the creditor comes to feel that the court has joined with the debtor in depriving

the creditor of his rights and, thus, violating 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments.

4. For same reason, the court has shown prejudice towards appellant in adjudicating the issues brought before it. The court has allowed appellees to manipulate the laws governing Georgia in their favor, resulting in appellees being allowed to allege certain occurrence of events and to misrepresent dates and amounts. It also seems like the court has rewarded the defaulting party with clear title to property and has left appellant with no security let alone any recourse in the courts short of appealing to this Court. The court has yet to adjudicate upon appellant's cross - complaint and motion for summary judgement filed on March 13, 1986. The court has also rendered judgements on

subsequent motions submitted by appellees. These events have worked together to deprive appellant of due process and equal protection under the law as is guaranteed by the Fifth and Fourteenth Amendments and 42 U.S.C. § 1983.

5. Appellant believes that only this Court can equitably adjudicate the issues in this case because it is not prejudiced by local concerns.

6. The court has yet to address the basic issues surrounding this case:

a) that contract between appellant, Hudgens, and Gordin was framed in accordance to the Constitution and laws of Georgia;

b) appellees have admitted their default under contract, and, thus, are the proximate cause of appellant's performance of foreclosure;

c) that state intervention on

behalf of defaulted appellees is a violation of appellant's contractual rights as well as his right to liberty as provided by the Fifth and Fourteenth Amendments;

d) that foreclosure is a remedy provided by law to appellant when a default occurs;

e) that the court's intent in dissolving the original Deed To Secure Debt was not to be equitable but to deprive appellant of his interest in property which violates appellant's right to due process and equal protection under the laws of the Fifth and Fourteenth Amendments and 42 U.S.C. § 1983.

Appellant respectfully submits that probable jurisdiction should be noted.

Respectfully submitted,

MICKEY MANUEL
In Pro Per
P. O. Box 50847
Palo Alto, Ca. 94303
(415) 323-5827

APPENDIX A

Judgement of the Supreme Court

of the State of Georgia

Entered May 19, 1987

In the Supreme Court of Georgia

Decided: May 19, 1987

44386. MANUEL v. HUDGENS et al.

Judgement affirmed without opinion pursuant to Rule 59. The appellees' motion to dismiss and motion for frivolous appeal penalties are denied. All the Justices concur.

APPENDIX B

Order of the Court of Appeals

of the State of Georgia

Entered February 19, 1987

Court of Appeals

of the State of Georgia

Atlanta, February 19, 1987

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

74477. Mickey Manuel v. Robert Hudgens et al (86-2016 and 86-2015-3)

This case came before this court upon an appeal from the Superior Court of DeKalb County, and upon a record formally certified and transmitted by the clerk of that court; and this court being of the opinion that the case is one of which the Supreme Court and not this court has jurisdiction, the clerk of this court is ordered to transfer the records to the Clerk of the Supreme Court together with copy of this order.

APPENDIX C

Order of the Superior Court

of DeKalb County

Entered April 11, 1986

IN THE SUPERIOR COURT OF DEKALB COUNTY -C-1-
STATE OF GEORGIA

JERRY PORTER, DAVID SHAKKOUR, JOHN PETREE,	:	
PLAINTIFFS	:	
vs.	:	CIVIL ACTION FILE NO. 86-2016-3
MICKEY MANUEL, HOBERT HUDGENS, ZAFRIR GORDIN, a/k/a TZAFRIR GORDIN	:	
DEFENDANTS	:	

ORDER

The above-styled matter having come on before this Court for a Rule Nisi hearing on April 3, 1986, and having been heard simultaneously with Case Number 86-2015-3, all parties in both cases having appeared either in person or by counsel with the exception of Mickey Manuel. Upon hearing argument of counsel and statements in place by counsel, this Court finds as follows:

1.

Defendant Mickey Manuel has received copies of the complaints and prior order of this Court and has responded to same by filing a "Brief in Support of Answer Cross-Complaint and Motion for Summary Judgment", "Answer Cross-Complaint and Motion for Summary Judgment", together with documents attached thereto.

2.

The amount alleged due by Tzafrir Gordin and Robert Hudgens to Mickey Manuel has been tendered into the Registry of this Court. Two installments consisting of the February and March 1986 installments due from Jerry Porter, David Shakkour and John Petree to Robert Hudgens and Tzafrir Gordin have been tendered into the Registry of this Court.

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

3.

Plaintiffs in Case Number 86-2016-3 have interplead these funds and amended their complaint to include a prayer for interpleader and have requested an accounting.

Based on the foregoing facts, this Court concludes that all plaintiffs in both of the above-styled cases, 86-2015-3 and 86-2016-3, are entitled to an interlocatory injunction remaining in full force and effect until all issues in this case may be properly heard at time of trial and that plaintiffs in Case Number 86-2016-3 are entitled to an accounting and a report from a Certified Public Accountant.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1.

Defendant Mickey Manuel is hereby enjoined, until further order of this Court, either individually or by and through his agents, or together with his agents, from taking any further action on or toward the foreclosure of that property known as 1910 Bixby Street, the legal description of which is identified by Exhibit in the complaints to both Case Number 86-2015-3 and 86-2016-3. This injunction includes the following: (a) advertising any notice of intent to foreclose, (b) offering the property for sale pursuant to any security deed, (c) bidding the property or conducting a sale on the Courthouse steps.

2.

An accounting among all parties in Case Number 86-2015-3 and 86-2016-3 is hereby ordered to be conducted by David A. Braver, an accountant with offices located at 6400 Powers Ferry Road, NW, Atlanta, Georgia. David A. Braver is hereby appointed to function in this capacity for the benefit of this Court. The costs of such accounting shall be assessed as costs of each case set forth above. All parties in this action shall provide all documents, cancelled checks and other proofs of payment within thirty days of this order to the above named accountant. In any instance in which original documents cannot be provided, the parties shall be entitled to provide legible copies. Said accountant shall, within thirty days of receipt of such documents, make an intitial report to this Court and mail copies of same to each party in this case. Each party shall have fifteen days within the mailing date of such report to submit to said accountant any additional documentation or explanations refuting the findings of said accountant. Within fifteen days after the expiration of such time by parties to refute such findings, said accountant shall make a final report to this Court. All parties in this case having had an opportunity to be heard at this hearing of April 3, 1986 and, all parties which have appeared at such hearing having consented hereto, it is hereby further ordered that all parties to this case shall be bound by the findings of this accounting.

3.

All funds paid into the Registry of this Court in Case Number 86-2016-3 shall be maintained under the supervision of the Clerk of this Court but shall be transferred to an interest-bearing account. Such funds shall be so maintained until further order of this Court. Such funds are specifically maintained to protect any costs and legal fees incurred by plaintiffs in Case Number 86-2016-3 should it be determined that such plaintiffs are entitled to a right to recover in said case pursuant to equitable interpleader.

4.

All future installments due between plaintiffs and defendants in Case Number 86-2016-3 shall be paid directly to defendants in such case commencing with the April installment and may continue to be paid until the final trial of the issues before this Court unless the findings of the accounting determine that there are not sufficient funds in related Case Number 86-2015-3 to cover all obligations which may be due to the defendant Mickey Manuel in said case. In such event, plaintiffs in Case Number 86-2016-3 shall be entitled to interplead any future installments due to defendants in that case into the Registry of this Court until said sums so tendered and interpled are sufficient to cover any balance which the findings of the accounting may reveal are due to defendant Manuel in Case Number 86-2015-3, when added to the funds already in the Registry of this Court in Case Number 86-2015-3.

5.

All funds which have been previously deposited into the Registry of this Court in Case Number 86-2015-3 shall be maintained under the control of the Clerk of this Court until further order, but shall be transferred to an interest-bearing account.

SO ORDERED this 11th day of April, 1986.

/s/
CLARENCE P. SEELIGER
Judge, Superior Court of
DeKalb County, Georgia

Order Prepared and Presented By:

Robert P. Witcher
Of Counsel to
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Suite 320
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Atlanta, GA 30303
404-525-3404

APPENDIX D

Order of the Superior Court

of DeKalb County

Entered February 21, 1986

IN THE SUPERIOR COURT

OF DE KALB COUNTY, STATE OF GEORGIA

TZAFRIR GORDIN	)	
	)	
a/k/a ZAFRITI GORDIN	)	
	)	
and	)	
	)	
ROBERT HUDGENS,	)	Civil Action
	)	
PLAINTIFFS	)	File No. 86-2015-3
	)	
vs	)	
	)	
MICKEY MANUEL,	)	
	)	
DEFENDANT	)	
JERRY PORTER,	)	
	)	
DAVID SHAKKOUR,	)	
	)	
and	)	
	)	
JOHN PETREE	)	Civil Action
	)	
PLAINTIFFS	)	File No. 86-2016-3
	)	
vs	)	
	)	
MICKEY MANUEL,	)	
	)	
ROBERT HUDGENS,	)	
	)	
and	)	
	)	

TZAFRIR GORDIN)
)
a/k/a ZAFRITI GORDIN)
)
DEFENDANTS)

ORDER

After the above cases having come for hearing on a duly scheduled date, and after a review of the pleadings and a presentation of the case by counsel, it is hereby ordered and found as follows:

Finding of Facts

1. A foreclosure advertisement has been run by Defendant Mickey Manuel, whereby he is giving notice of intent to sell at foreclosure that property known as 1910 Bixly Street, Atlanta, De Kalb County, Georgia.

2. It appearing that there is an established controversy concerning Defendant Mickey Manuels' right to foreclose on said property.

Conclusion of Law

It appearing that there would be irreparable damage and that there is no equitable remedy at law to any of the Plaintiffs and other interested parties should the foreclosure scheduled on March of 1986 be allowed.

Wherefore the plaintiffs are entitled to a Temporary Restraining Order under §65 of the Georgia Civil Practice Act.

IT IS HEREBY ORDERED AND ADJUDGED:

That the Defendant Mickey Manuel, individually and by and through his agents, is hereby restrained and enjoined from taking any further action on or toward the foreclosure of that property known as 1910 Bixby Street, the legal description of which is identified by exhibit in both complaints.

This injunction includes the

following: (a) advertising any notice of intent to foreclose, (b) offering the property for sale pursuant to any security deed, (c) bidding the property or conducting a sale on the Courthouse steps.

Ordered further that payments between the Plaintiffs and Defendants in Civil Action 86-2016-3 shall be tendered into the registry of the Court as same become due from time to time.

So ordered this 21st day of February, 1986.

Clarence F. Seeliger
Superior Court Judge
De Kalb County

Prepared and consented to by:

Larry J. White
1126 Ponce de Leon Avenue NE
Atlanta, GA 30306
(404) 872-7086

Robert P. Witcher
Attorney for Tzafrir Gordin
and Robert Hudgens
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Atlanta, GA 30303
(404) 525-3404

APPENDIX E

Order of the Superior Court

of DeKalb County

Entered June 12, 1987

IN THE SUPERIOR COURT

OF DE KALB COUNTY, STATE OF GEORGIA

TZAFRIR GORDIN	)	
	)	
a/k/a ZAFRITI GORDIN	)	
	)	
and	)	
	)	
ROBERT HUDGENS,	)	Civil Action
	)	
PLAINTIFFS	)	File No. 86-2015-3
	)	
vs	)	
	)	
MICKEY MANUEL,	)	
	)	
DEFENDANT	)	

JERRY PORTER,	)	
	)	
DAVID SHAKKOUR,	)	
	)	
and	)	
	)	
JOHN PETREE,	)	Civil Action
	)	
PLAINTIFFS	)	File No. 86-2016-3
	)	
vs	)	
	)	
MICKEY MANUEL,	)	
	)	
ROBERT HUDGENS,	)	
	)	
and	)	
	)	

TZAFRIR GORDIN)
)
a/k/a ZAFRITI GORDIN)
)
DEFENDANTS)

ORDER

The above-styled matter having come on before this Court for a Rule NISI Hearing on June 12, 1986, Case 86-2015-3 and Case 86-2016-3 having been heard simultaneously on the Contempt Petition filed against Defendant Mickey Manuel in Case 86-2015-3 and on the Contempt Petition and Amendment to Contempt Petition filed against Defendant Mickey Manuel in Case 86-2016-3. After reviewing pleadings, hearing from counsel and considering all matters before the Court, IT IS HEREBY ORDERED AND FOUND AS FOLLOWS:

FINDINGS OF FACT

1. Notice of this hearing was provided to all of the parties in the

above-styled actions.

2. This Court entered a Restraining Order which was signed and subsequently filed on March 10, 1986. Said Restraining Order did restrain the Defendant Mickey Manuel from taking any further action toward foreclosure of said property known as 1910 Bixby Street.

3. A hearing date was set for April 3, 1986 to consider in person Interlocutory Injunction and other matters before the Court. Notice of the April 3, 1986 hearing was given to Defendant Mickey Manuel.

4. The Court entered an Interlocutory Injunction on an order that was signed by this Court and subsequently filed on April 14, 1986. The Defendant received notice from Plaintiffs in both cases that this order had been made on order of the Court. The Order enjoined

the Defendant Mickey Manuel from taking any further action on or toward the foreclosure of that property known as 1910 Bixby Street.

5. Subsequent to receiving notice of the Original Order, subsequent to receiving notice of the April 3 hearing, and subsequent to receiving notice of the Court's order filed April 14, 1986, the Defendant Mickey Manuel did willfully and wantonly violate the terms of the Court's Order, including but not limited to the following actions: by threatening to use criminal sanctions against the Plaintiff Jerry Porter, to enforce a purported foreclosure, as indicated on letter of Defendant Manuel dated April 28, 1986; and by preparing a Deed under Power of Sale on April 29, 1986, by executing a Deed under Power of Sale on April 29, 1986; and of filing a Deed under Power

of Sale on the public records of De Kalb County on Deed Book 5458, Page 771.

6. The Court finds that the conducting of a foreclosure on April 1, 1986 as purported on the above-identified Deed under Power of Sale was also a willful and wanton violation of this Court's order filed March 10, 1986.

7. The Deed under Power of Sale showed on its face that it was not advertised during the four weeks immediately prior to the first Tuesday in April, 1986 (the date of the alleged foreclosure).

Conclusions of Law

1. That Deed under Power of Sale dated April 29, 1986 filed in Deed Book 5458 Page 771 is void, and shall so be marked by the Clerk of the Superior Court of De Kalb County.

2. That Deed to Secure Debt dated May 22, 1980 recorded in the De Kalb

County records at Deed Book 4274 Page 46 is hereby declared functus officio.

3. The Defendant Mickey Manuel is held in willful and wanton contempt of this Court.

4. The Defendant Mickey Manuel may purge himself of contempt by: (a) canceling the Deed to Secure Debt dated April 29, 1986 recorded at Deed Book 5458 Page 771 within ten (10) days of this Court's Order, (b) by paying attorney's fees to Plaintiff, movant in Case 86-2015-3 in the amount of One Thousand and No/100ths Dollars ($1,000.00), (c) by paying attorneys fees to Plaintiff, movant in case 86-2016-3 in the amount of One Thousand Five Hundred and No/100ths Dollars ($1,500.00).

SO ORDERED this 12th day of June, 1986.

Clarence F. Seeliger
Superior Court Judge
De Kalb County

APPENDIX F

Notice of Appeal to

The Supreme Court of the United States

Entered June 15, 1987

NOTICE OF APPEAL TO

THE SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF GEORGIA

ROBERT HUDGENS,	)	
	)	
TZAFRIR GORDIN	)	
	)	
a/k/a ZAFRITI GORDIN	)	
	)	
PLAINTIFFS	)	Case No. 44386
	)	
and	)	
	)	
JERRY PORTER,	)	
	)	
DAVID SHAKKOUR,	)	
	)	
and	)	
	)	
JOHN PETREE	)	NOTICE OF APPEAL
	)	
PLAINTIFFS	)	
	)	
vs	)	
	)	
MICKEY MANUEL,	)	
	)	
DEFENDANT	)	

_____/

Notice is hereby given that MICKEY MANUEL, Defendant above named, hereby

appeals to the United States Supreme Court from the final judgment from the Order of Contempt of Court entered on June 12, 1986, and affirmed by the Supreme Court of Georgia entered on May 19, 1987. This appeal is taken under 28 USC §1257 (1986).

Dated: June 15, 1987

MICKEY MANUEL
In Pro Per
PO Box 50847
Palo Alto, CA 94303
(415) 323-5827

APPENDIX G

Deed To Secure Debt

Filed May 29, 1980

DEED TO SECURE DEBT

FILED & RECORDED
DEKALB CO. GA.
MAY 23 10 20 AM
CLERK OF SUPERIOR COURT

STATE OF GEORGIA

FULTON County.

THIS INDENTURE, Made the 22nd day of May one thousand nine hundred Eighty, between

ZAFRIR GORDIN and ROBERT HUDGENS

of the County of DeKalb, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

MICKEY MANUEL

as party of the second part, hereinafter called Grantee:

WITNESSETH, That Grantor, for and in consideration of the sum of Twenty Thousand and no/100----------($ 20,000.00) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, himself, his and assigns, the following described property, to-wit:

ALL that tract or parcel of land lying and being in Land Lot 206, 15th District, DeKalb County, Georgia, and being more particularly described as follows:

BEGINNING at a point on the northerly side of Bixby Street two hundred fifty-nine and three tenths (259.3) feet easterly as measured along the northerly side of Bixby Street from the corner formed by the intersection of the northerly side of Bixby Street with the easterly side of Warren Street, said point of beginning also being at the corner formed by the intersection of the northerly side of Bixby Street with the easterly side of a 10-foot alley; run thence easterly along the northerly side of Bixby Street that forms an interior angle of 90 degrees 28 minutes with the easterly side of said 10-foot alley one hundred three and two tenths (103.2) feet to the center line of an 18-foot drive; run thence northeasterly along the center line of said 18-foot drive at an interior angle of 113 degrees 42 minutes with the last preceding course one hundred twenty-five and five tenths (125.5) feet to a point; continue thence northeasterly along the center line of said 18-foot drive at an interior angle of 175 degrees 05 minutes with the last preceding course sixty-seven and four tenths (67.4) feet to a point; run thence easterly along the center line of said 18-foot drive at an interior angle of 241 degrees 39 minutes with the last preceding course one hundred fifty-five and three tenths (155.3) feet to a point; run thence northerly at an interior angle of 99 degrees 06 minutes with the last preceding course two hundred twenty-one and one tenth (221.1) feet to a point; run thence westerly at an interior angle of 90 degrees 28 minutes with the last preceding course three hundred twenty-nine and six tenths (329.6) feet to the easterly side of said 10-foot alley; run thence southerly along the easterly side of said 10-foot alley at an interior angle of 89 degrees 32 minutes with the last preceding course four hundred twenty-six and one tenth (426.1) feet to the northerly side of Bixby Street and the point of beginning, being improved property having a 58-unit apartment project thereon known as 1910 Bixby Street according to the present system of numbering in the City of Atlanta, Georgia, together with all fixtures, appurtenances, heating, ventilation and plumbing equipment therein and trees and shrubbery now on the premises. The purchase price also includes all stoves and refrigerators now in the property.

Also conveyed herewith are all of the rights, usages and privileges as contained in a certain Joint Driveway Agreement, dated February 26, 1963, by and between the Major Corp. of Atlanta and R.J.G. Land Co., Inc. and James V. Wilbanks and J. A. Cronic, as appears of record in Deed Book 1756, page 591, in the office of the Clerk of Superior Court of DeKalb County, Georgia.

This conveyance is subject to (1) Zoning ordinances, (2) General utility easements, (3) Restrictions of record, and (4) Leases to tenants.

This deed is made subject and subordinate to a loan deed from Joel K. Isenberg and Seraphina T. Cohen to Phoenix National Life Insurance Company dated June 30, 1975 recorded July 3, 1975, in the original principal amount of $185,000.00 and UCC #149,177, also deed from Mickey Manuel to Joel K. Isenberg and Seraphina T. Cohen dated October 10, 1979 in Deed Book 4154, page 141, DeKalb County Records, in the original principal amount of $53,590.73. Any default in the performance of any of the covenants of said deeds or the notes evidencing the indebtedness secured thereby, shall be construed as a default under the terms of this conveyance by reason of which grantee herein may declare the entire indebtedness secured hereby due and payable at once.

GEORGIA INTANGIBLE TAX PAID
$ 60.00
5-23- 1980
EUGENE E. ADAMS, Tax Commissioner
DEKALB COUNTY, GA.

60.00

BOOK 4274 PAGE 46

MP-2

TO HAVE AND TO HOLD the said bargained premises with all and singular the rights, members and appurtenances thereto appertaining, to the only proper use, benefit and behoof of Grantee, himself, his - and assigns, in fee simple; and Grantor, hereby covenants that he is lawfully seized and possessed of said property, and has good right to convey it, and that it is unencumbered; and that the said bargained premises, unto Grantee, himself, his and assigns, against Grantor, and the heirs, executors and administrators of Grantor, and against all and every other person or persons (except as may be otherwise expressly stated herein) shall and will WARRANT AND FOREVER DEFEND.

This conveyance is made under the provisions of Chapter 67-13 (Conveyances to Secure Debt) of the 1933 Code of Georgia, and upon payment of the debt hereby secured this security deed shall be cancelled and surrendered pursuant thereto, the debt hereby secured being one note of even date herewith in the original amount of $20,000.00 being due and payable as follows:

Payment of principal and interest in the amount of $253.36 shall be payable monthly commencing June 22, 1981 and continuing on the 22nd day of each month thereafter up to and including May 22, 1986 when the entire remaining principal balance together with any accrued interest shall be due.

The Grantee covenants that the liability on the indebtedness secured by this conveyance is limited to the rights, powers and remedies contained herein and in the event of default bythe Grantor, the Grantee shall be limited to the lien, power of sale and right of foreclosure granted hereunder and shall not be entitled to enter suit or obtain a judgment in any court against the Grantor with respect to any unpaid balance of the indebtedness after the exercise of the rights, powers and remedies created herein or provided by an statute.

It is the intention of this instrument to secure not only the indebtedness hereinabove described along with any and all renewals and extensions thereof, in whole or in part, but also any and all other and further indebtedness now owing or which may hereafter be owing, however incurred, to Grantee, its successors and assigns, by Grantor and Grantor's successors in title.

It is agreed that the Grantee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the loan secured hereby.

As further security for the debt herein described, Grantor hereby sells, assigns, sets over and transfers to the Grantee all of the rent which shall hereafter become due or be paid for the use of the above described property, reserving only the right to the Grantor to collect said rents so long as there is no default in the obligations of the Grantor under this deed or in payment of the debt hereby secured. In the event of such default in said debt or any part thereof, principal or interest, or in the performance of any obligation of the Grantor under this deed, Grantee may enter upon said premises and collect the rents therefrom and the Grantee is hereby constituted and appointed as Grantor's agent and attorney in fact to collect such rents by any appropriate proceeding, and Grantee is authorized to pay a rental or real estate agent five per cent (5%) commission for collecting such rents. The net amount of rent so collected shall be applied towards the debt hereby secured.

And the said Grantor hereby covenants, for so long as said indebtedness, or any part thereof, shall remain unpaid, to keep said premises in as good condition as they now are; to pay all taxes and assessments that may be liens upon said premises, as they become due; and to keep the improvements on said premises insured in company or companies acceptable to said Grantee against loss or damage by fire and lightning, and extended coverage, in the sum of at least a reasonable amount---------- Dollars, with loss, if any, payable to said Grantee, and shall deliver the policies of insurance to the said Grantee; and that any tax, assessment, or premium of insurance, not paid when due by the Grantor, may be paid by the Grantee, and any sum so paid shall be added to the amount of said principal debt as part thereof, shall draw interest from the time of said payment at the rate of eight per centum per annum, and shall, with interest, be covered by the security of this deed. And should the said Grantee receive any money for damages covered by insurance, such money may be retained and applied toward the payment of any amount hereby secured or may be paid over, either wholly or in part, to the said Grantor to enable said Grantor to repair or replace improvements, or for any other purpose, without affecting the lien of this deed for the full amount secured hereby before such damage or such payment took place.

Time being of the essence of this contract, the Grantee shall have the right to accelerate the maturity of the debt hereby secured, by declaring the entire debt to be in default and immediately due and payable, upon the failure of Grantor to make any payment when due, pursuant to the note hereby secured, or upon failure of Grantor to perform any obligation or make any payment required of Grantor by the terms of this deed.

And Grantor further covenants and agrees that the possession of said premises, during the existence of said indebtedness, by Grantor, or any persons claiming under Grantor, shall be that of tenant under Grantee, or assigns, during the due performance of all the obligations aforesaid, and that in case of a sale as hereinafter provided, Grantor, or any person in possession under Grantor, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over.

In the event of default in the indebtedness hereby secured, either in due course or by acceleration as herein provided, or in the event of default in the performance of any of the obligations required of the Grantor by the terms of this deed, the Grantee shall be entitled to have a receiver appointed for the property herein described, in connection with or as a part of any proceeding to foreclose this deed or to enforce any of its terms or the collection of all or any part of said debt and Grantor agrees to the appointment of such receiver without proof of insolvency or other equitable grounds and hereby appoints the Grantee as attorney in fact with authority to consent for the Grantor to the appointment of such receiver.

In case the debt hereby secured shall not be paid when it becomes due by maturity in due course, or by reason of a default as herein provided, Grantor hereby grants to Grantee and assigns, the following irrevocable power of attorney: To sell the said property or any part thereof at auction, at the usual place for conducting sales at the Court House in the County where the land or any part thereof lies, in said State, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in a newspaper published in the County where the land lies, or in the paper in which the Sheriff's advertisements for such County are published, all other notice being hereby waived by Grantor, and Grantee or any person on behalf of Grantee, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a sufficient conveyance of said premises in fee simple, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends, and Grantor hereby constitutes and appoints Grantee and assigns, the agent and attorney in fact of Grantor to make such recitals, and hereby covenants and agrees that the recitals so to be made by Grantee, or assigns, shall be binding and conclusive upon Grantor, and the heirs, executors, administrators and assigns of Grantor, and that the conveyance to be made by Grantee or assigns, shall be effectual to bar all equity of redemption of Grantor, or the successors in interest of Grantor, in and to said premises, and Grantee or assigns, shall collect the proceeds of such sale, and after reserving therefrom the entire amount of principal and interest due, together with the amount of any taxes, assessments and premiums of insurance or other payments theretofore paid by Grantee, with eight per centum per annum thereon from date of payment, together with all costs and expenses of sale and ten per centum of the aggregate amount due for attorney's fees, shall pay any over-plus to Grantor, or to the heirs or assigns of Grantor as provided by law.

The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

This deed and the note or notes hereby secured shall be deemed and construed to be contracts executed and to be performed in Georgia.

IN WITNESS WHEREOF, Grantor has hereto set their hand and seal the day and year first above written.

Signed, sealed and delivered in presence of

RICHARD E. RAYMER
Notary Public, Georgia, State at Large
Notary Public, My Commission Expires July 16, 1983

NOTARY PUBLIC GEORGIA STATE AT L

ZAFRIR CORDIN (L. S.)

ROBERT HUDGENS (L. S.)

(L. S.)

/hp

APPENDIX H

Promissory Note

Dated May 22, 1980

-14-1-

LAW OFFICES
HANSELL, POST, BRANDON & DORSEY
THIRTY THIRD FLOOR FIRST NATIONAL BANK TOWER
ATLANTA, GEORGIA 30303
TELEPHONE (404) 581-8000

$ 20,000.00 May 22 19 80

FOR VALUE RECEIVED, WE promise to pay to the order of

MICKEY MANUEL

the principal sum of

Twenty Thousand and no/100---------- DOLLARS,

in legal tender of the United States, with interest thereon from May 22, 1981 at the rate of nine per centum (9 %) per annum, on the unpaid balance until paid. Principal and interest shall be payable at the office of the holder above, 4 East Carol, Burlingame, California 94010 or at such other place as the holder hereof may designate in writing, as follows:

Payments of principal and interest in the amount of $253.36 shall be payable monthly commencing June 22, 1981 and continuing on the 22nd day of each month thereafter up to and including May 22, 1986 when the entire remaining principal balance together with any accrued interest shall be due.

The maker hereof reserves the privilege of paying this note in whole or in part at any time without penalty, and without the payment of any unearned interest.

Should any installment not be paid when due, or should the maker, or makers, hereof fail to comply with any of the terms or requirements of a security deed of even date herewith, conveying title to real property located in DeKalb County, Georgia as security for this indebtedness, the entire unpaid principal sum evidenced by this note, with all accrued interest, shall, at the option of the holder, and ~~xxxxxxxxx~~ with 5 days written notice to cure any default to the undersigned, become due and may be collected forthwith, time being of the essence of this contract. It is further agreed that failure of the holder to exercise this right of accelerating the maturity of the debt, or indulgence granted from time to time, shall in no event be considered as a waiver of such right of acceleration or estop the holder from exercising such right.

Installments not paid when due shall bear interest at the rate of 12 per cent. per annum from maturity. Should this note, or any part of the indebtedness evidenced hereby, be collected by law or through an Attorney at Law the holder shall be entitled to collect Attorney's fees in an amount equal to ten (10) per cent of the principal and interest, and all costs of collection.

And each of the undersigned, whether principal, surety, guarantor, endorser, or other party, severally waives and renounces, each for himself and family, any and all homestead and exemption rights either of us, or the family of either of us, may have under or by virtue of the laws of the State of Georgia, or any other State, or the United States, as against this debt or any renewal or extension thereof, and further waives demand, protest, notice of demand, protest and non payment.

* See Below

WITNESS our hand and seal

*The liability of the makers hereof is limited to the real property conveyed as security for this indebtedness, and the holder hereof may not enforce personal liability against the makers hereof with respect to this note or the indebtedness evidenced hereby.

[illegible] [SEAL]
ZAFIR GORDIN
[illegible] [SEAL]
ROBERT HUDGENS
[SEAL]

HP-2-N

APPENDIX I

Installment Chart

This chart is a compilation of documents submitted to the court by appellees on February 18, 1986.

installment due date	date of check	check number	comments
6-22-81	8-11-81	614	
7-22-81	8-24-81	624	
8-22-81	8-24-81	623	
9-22-81	9-23-81	645	
10-22-81	10-22-81	656	
11-22-81	11-25-81	658	
12-22-81	12-27-81	660	
1-22-82	1-27-82	663	
2-22-82	3- 1-82	665	
3-22-82			no installment paid
4-22-82	4- 1-82	667	

installment due date	date of check	check number	comments
5-22-82	5- 3-82	671	
6-22-81	6- 1-82	673	
7-22-82	6-30-82	676	
8-22-82	8-10-82	681	
9-22-82	9- 6-82	686	
10-22-82	10-10-82	688	
11-22-81	12- 3-82	695	
12-22-82	12-3-182	697	
1-22-83	1-15-83	699	
2-22-83	2- 9-83	701	
3-22-83	3-15-83	702	

installment due date	date of check	check number	comment
4-22-83	5- 1-83	704	
5-22-83	5-24-83	708	
6-22-83			no installment paid
7-22-83	7- 5-83	712	
8-22-83	8- 2-83	716	
9-22-83	9- 6-83	717	
10-22-83	10-15-83	719	
11-22-83	11-11-83	724	
12-22-83	12-11-83	725	
1-22-84	1- 1-84	728	
2-22-84	2-12-84	730	

installment due date	date of check	check number	comment
3-22-84	5-55-84	732	
4-22-84	4- 3-84	736	
5-22-84	5-10-84	739	
6-22-84	6-10-84	740	
7-12-84	7-12-84	743	
8-22-84	8- 4-84	746	
9-22-84	9- 6-84	748	
10-22-84	10- 9-84	751	
11-22-84	10-21-84	752	
12-22-84	12-15-84	753	
1-22-85	12-31-84	757	

installment due date	date of check	check number	comment
			to insufficient funds to cure default.
11-22-85			
12-22-85			
1-22-86			Manuel notified appellees of acceleration of debt on 1-22-86.
2-22-86			Appellees mailed nine installments on 1-23-86 and they were returned due to insufficient to cure default.
3-22-86			
4-22-86			
5-22-86			

APPENDIX J

Letter to Gordin

From Porter

Dated September 23, 1985

September 23, 1985

Mr. Tzafrir Gordon
Box 905
Decatur, Ga. 30030

Dear Mr. Gordon

On August 26, 1985, I received a call from Mr. Mickey Manuel stating that the payments on the note secured by the proerty at 1910 Bixby Street were in arrears. INasmuch as the security deed from you to Mr. Manuel would indicate that the payments should be made by you, upon the advice of James Wilson, the closing attorney at the time we purchased the property, I am notifying you that I will make up the back payments to Mr. Manuel and deduct it from the monthly payments I send to you.

I also note that the entire note balloons on May 22, 1986. I wish to con-

firm with you that you will pay that note in full on that date and send me a copy of the cancelled note. If the note to Ideal Realty has been paid already as mentioned in the security deed, please send me a copy of that cancelled note.

In April, 1985 we paid you $13,500. The note states that $10,000 of this is credited to the principal and $3,500 credited to interest then due. Please send an amortization schedule of this note and an explanation of this transaction, especially noting what interest the $3,500 was to pay.

I tried to reach you by phone several times over the past few days but was unable, although I did talk to your wife once. I am sure that there is a good explanation for all this and will look forward to working with you in getting it settled.

If you do not owe the payments to Mr. Manuel, or wish to handle this some other way, please contact me within 5 days so I will not send the payments to him.

Thank you.

Jerry Porter

Box 33124

Decatur, Ga. 30033

Phone: 292-2223
633-5987

CC: Mr. Mickey Manuel
Mr. James Wilson
Mike Hopper for Sterling Properties

APPENDIX K

Letter to Manuel

From Porter's Attorney

Dated January 8, 1986

January 8, 1986

Mr. Micky Manuel

PO Box 50847

Palo Alto, California 94303

Dear Mr. Manuel:

Please be advised that our office is representing Jerry Porter, who has received a substantial amount of communication and correspondence from you concerning an outstanding note obligation.

As I am sure you are aware, my client is part owner of 1910 Bixby Street.

It is my understanding, that it is your contention, that there are a substantial number of payments which have not been made to you by Zafrr Gordin and Robert Hudgens, under their note obligation to you dated May 22, 1980.

As I am sure you are aware, my client has kept current all payments on said property.

We request from you, a copy of the notarized statement, verifying the number of payments which are in arears on said property. We shall be glad to take this matter up directly with the two individuals which are directly obligated to make payment to you.

Your attention to this matter is greatly appreciated.

Respectfully yours,

Larry James White
Attorney at Law

LJW/lk

APPENDIX L

Letter to Porter's Attorney

From Manuel

Dated January 22, 1986

White & Daum

1126 Ponce de Leon Ave,, N.E.

Atlanta, Ga. 30306

Attn: Larry White

January 22, 1986

Re: 1910 Bixby St., Atlanta, Ga.

Dear Larry;

As per the telephone message left with your secretary, Mary McLaine, on January 22, 1986, I am demanding full payment of all arrearages due to date or for you to quit the property specified above.

Tzafrir Gordin, Jerry Porter, and yourself have all been given an opportunity for the last several months to cure this default, and none of you, to date, have honestly made any adequate attempt to do so. As I stated in the phone conversation with Mary, if I don't receive full payment of all arrearages by January 27, 1986, I will

proceed dispossessory action on the property.

As I mentioned to Mary, if you don't agree with the figure that I sent to Jerry Porter on October 2, 1985, you may send me the amount that you calculate is due provided that you also send photostatic copies of all the checks (front and back) that were supposedly cashed by me since June 22, 1981---the difference will, obviously, be the amount that is due.

Mickey Manuel
P. O. Box 50847
Palo Alto, Ca. 94303

APPENDIX M

Letter to Porter's Attorney

from Manuel

Dated January 27, 1986

CERTIFIED MAIL P 117 511 423

White & Daum

1126 Ponce de Leon Ave., N.E.

Atlanta, Ga. 30306

ATTN: Larry White

January 27, 1986

Re: 1910 Bixby St., Atlanta, Ga.

Dear Mr. White;

Jerry Porter, the new owner of the above stated property, has informed me that you are acting as his attorney, therefore, I am notifying you that the above property is in default. I do declare the entire balance of that certain DEED TO SECURE DEBT, dated May 22, 1980, between Tzafrir Gordin, Robert Hudgens, and myself to be now due and payable in its entirety. Please find enclosed a copy of the said document.

Being that there is a descrepancy

between what Mr. Gordin and I claim to be due, there is only one procedure available to you in order to arrive at an absolute figure. That procedure is to collect all the checks that Mr. Gordin claimed were cashed by me since June 22, 1981. Photocopies of the front and back of each check should be sent to me along with the amount that you calculate is due. According to my figures, the entire balance that is due and payable now on the property is $23,809.13.

Be advised that if this amount is not received by February 3, 1986, we will begin publication of the foreclosure on February 6, 1986.

Mickey Manuel
P. O. Box 50847
Palo Alto, Ca. 94303

APPENDIX N

Letter to Porter's Attorney

From Manuel

Dated February 12, 1986

CERTIFIED MAIL P 177 511 415

White & Daum

1126 Ponce de Leon Ave., N.E.

Atlanta, Ga. 30306

ATTN: Larry White

February 12, 1986

Re: 1910 Bixby St., Atlanta, Ga.

Dear Mr. White;

On February 10, 1986, I received the copies of the checks you sent. From my inspection, there were several payments that were not made which justified my foreclosure action against the above mentioned property. I also noted the cancelled checks from June 1981 to December 1982, June 1983, April, June, July, and December 1985, and January 1986 were not included. Why didn't Mr. Gordin include these as well?

In response to your letter, dated February 3, 1986, for you to allege

fraud on my part is to overlook the facts that:

1) there are installments that are delinquent as justified by the very copies you sent to me on February 10, 1986;

2) no proof has been brought forward to show that all the payments were made from June 1981 through December 1982, June 1983, April, June, July, and December 1985, and January 1986;

3) Zafrir Gordin, Jerry Porter, and yourself have all shown apparent unwillingness to cooperate in solving this situation before I began publication;

4) numerous long distance phone calls and letters were dispatched to Zafrir Gordin, Jerry Porter, and yourself, but no effort was put into responding adequately;

checks 766, 767, 768, and 769, dated

9-8-85, 9-9-85, 10-1-85, and 10-29-85, respectively, made out to the amount of $231.00 each, were, at the time received, inadequate to bring the account current. I was informed by Mr. Porter that he would bring the entire account current himself since Mr. Gordin wasn't doing so. Mr. Porter advised me to send back Mr. Gordin's checks and said that he would be willing to make $1,500.00 monthly payments beginning December 1, 1985, until which time I was brought current or until the entire sum was due and payable---whichever came first. This was back in November 1985.

As I stated in my letter to you, dated January 27, 1986, the above mentioned property is in default under the terms of that certain Deed To Secure Debt. Publication of foreclosure against this property began on February

6, 1986, in the Decatur-DeKalb News. You will find enclosed a copy of the publication. I do declare the entire balance of that certain Deed To Secure Debt, dated May 22, 1980, between Zafrir Gordin, Robert Hudgens, and myself to be now due and payable in its entirety. I am returning Zafrir Gordin's checks that were received on February 10, 1986, ie, check 766, 767, 768, 769, and 722, dated 9-8-85, 9-9-85, 10-1-85, 10-29-85, and 1-13-86, respectively. The total amount is insufficient to cure the default. If you wish to settle this, short of foreclosure, you will need to produce front and back copies of all the checks that you claim were cashed by me by me during the June 1981 to December 1982,June 1983, April, June, July, and December 1985, and January 1986. The total due will be the principal plus

interest and all other expenses incurred towards the settlement of this matter, as provided by law, less the accountable payments.

Mickey Manuel
P. O. Box 50847
Palo Alto, Ca. 94303

APPENDIX O

Letter To Gordin

From Manuel

Dated, February 12, 1986

CERTIFIED MAIL P 117 511 414

Zafrir Gordin

PO Box 905

Decatur, GA 30030

February 12, 1986

Re: 1910 Bixby St., Atlanta, GA

Dear Mr. Gordin:

I am notifing you that the above-stated property is in default under the terms of that certain Deed to Secure Debt. Please find enclosed checks 766, 767, 768, 769, and 772, dated 9-8-85, 9-9-85, 10-1-85, 10-29-85, and 1-13-86, respectively. These checks were received February 10, 1986, and the total amount is insufficient payment to cure the default. Publication of foreclosure against this property began on February 6, 1986, in

the Decatur-DeKalb News. You will find enclosed a copy of the publication. I do declare the entire balance of that certain Deed To Secure Debt, dated May 22, 1980, between Zafrir Gordin, Robert Hudgens, and myself, to to be now due and payable in its entirety.

Mickey Manuel
PO Box 50847
Palo Alto, CA 94303

APPENDIX P

Official Stamp of

Clerk of Superior Court

DeKalb County

Dated: April 1, 1986

CLERK OF SUPERIOR COURT
DeKALB COUNTY
556 N. McDONOUGH ST.
DECATUR, GA. 30030

FILED & RECORDED
DEKALB CO. GA.
APR 1 8 30 AM '86
WHITFIELD
CLERK OF SUPERIOR COURT

APPENDIX Q

Deed Under Power of Sale

Filed April 29, 1987

-Q-1

Warranty Deed Under Power of Sale No. 174 American Seal & Stamp Company - Atlanta, Ga.

Georgia,--County of DeKalb

FILED & RECORDED
APR 29 5 02 PM '86

This instrument made and executed this 29th day of April 19 86

WITNESSETH:

That Whereas, on the 1st day of April 19 86, during the legal hours of sale Mickey Manuel As Attorney in fact for Zafrir Gordin and Robert Hudgens of said State, did expose for sale at public outcry, to the highest bidder for cash, before the Court House Door in DeKalb County, Georgia, the lands hereinafter described, at which sale Mickey Manuel was the highest and best bidder at and for $17,782 87/100 Dollars cash; and said property was then and there knocked off to him at said sum. The said sale was made by Mickey Manuel Attorney in fact for Zafrir Gordin and Robert Hudgens under and by virtue of the power and authority granted to Him in a certain loan deed executed to Mickey Manuel May 22, 1980, by Zafrir Gordin and Robert Hudgens which deed is recorded in Deed Book 2224, folio 116, DeKalb County, Georgia, Records. Said sale was made after advertising the time, place and terms thereof in the Decatur Latitude News-Exp, having general circulation in DeKalb County, Georgia, and published in City of Decatur, in said County, and being the publication in which Sheriff's advertisement for said County are now published, once a week for four weeks prior to said sale, to-wit: On the Dates Jan 2-6 through 2-27, 1986, and said advertisement in all respects complied with the requirements of the power of sale contained in said loan deed. Said sale was made for the purpose of paying the indebtedness due to the said Mickey Manuel secured by said loan deed, and the expenses of the sale; all of which was mature and payable because of default of the said loan Deed in a payment of Monthly Installments secured by said loan deed, default in payment of any one of which for the space of 5 days matured the entire indebtedness.

NOW, THEREFORE; the said Attorney in Fact Mickey Manuel for Zafrir Gordin and Robert Hudgens, acting under and by virtue of the power of sale contained in said loan deed, for and in consideration of $17,782 87/100 Dollars paid for said lands by virtue of the public sale aforesaid, and in consideration of the facts hereinbefore recited, has bargained, sold and conveyed, and does hereby bargain, sell and convey unto said Mickey Manuel, heirs and assigns, the following described property, Viz.:

See Attached Complete Description

This deed is made subject and subordinate to a loan deed from [illegible] and Seraphina T. Cohen to Phoenix National Life Insurance Company [illegible] 30, 1975 recorded July 3, 1975, in the original principal amount [illegible] and UCC #149,177, also deed from Mickey Manuel to Joel K. [illegible] T. Cohen dated October 10, 1979 in Deed Book 4154, page 141, [illegible] Records, in the original principal amount of $53,590.73. Any default in the performance of any of the covenants of said deeds or the notes evidencing the indebtedness secured thereby, shall be construed as a default under the terms of this conveyance by reason of which grantee herein may declare the entire indebtedness secured hereby due and payable at once.

GEORGIA INTANGIBLE TAX PAID

TO HAVE AND TO HOLD the said described property unto Him, the said Mickey Manuel, heirs and assigns in fee simple.

It is the purpose and intent of this instrument to convey all of the right, title, equity and interest of said Zafrir Gordin and Robert Hudgens, legal representatives, heirs and assigns, and all persons whomsoever claiming under Them in and to said lands.

In witness of all of which, the said Mickey Manuel as Attorney in fact has hereunto set his hand and affixed his seal and delivered this instrument this day and year first above written.

Signed, sealed and delivered in the presence of:

Notary Public

DeKalb County, Georgia
Real Estate Transfer Tax
Paid $ 17.80
Date 4/29/86
CLERK, SUPERIOR COURT

Mickey Manuel (Seal)

(Seal)

(Seal)

By: Nancy L. Brand
Deputy Clerk

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APPENDIX R

Letter to Porter

From Manuel

April 29, 1986

CERTIFIED MAIL P 305 503 126

Jerry Porter
P. O. Box 33124
Decatur, Ga. 30033-0124

April 29, 1986

Re: 1910 Bixby St., Atlanta, Ga.

Dear Mr. Porter;

This letter is to inform you that the foreclosure on the above referenced property was completed on April 1, 1986. The property was auctioned on the steps of the county court house as provided by law. Since I was the highest bidder, the property now belongs to me. I would appreciate our being able to make a smooth transfer of ownership, however if necessary, I will not hesitate to use the local constable to achieve this end. You are further informed not to use any income relating to 1910 Bixby Street as per this notice. These funds do not belong to you. They are to be deposited in an escrow account until the property

is turned over to me. Furthermore, all records that are the property of 1910 Bixby Street are to be turned over to me or my agent(s).

Thank You,

Mickey Manuel
P. O. Box 50847
Palo Alto, Ca. 94303

APPENDIX S

Additional

Constitutional And Statutory

Provisions Involved

28 U.S.C. § 1257(2) provides in pertinent part:

"Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

U.C.C. § 1-208 provides in pertinent part:

"A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure"

in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised."

U.C.C. § 9-501 provides in pertinent part:

"(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgement, foreclose, or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as

to the documents or as to the goods covered thereby. * * *"

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in Section 9-207."

U.C.C. § 9-503 provides in pertinent part:

"Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. * * *"

U.C.C. § 9-504 provides in pertinent part:

"(1) A secured party after default may sell, lease or otherwise dispose of any any or all of the collateral in its then

condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made; * * *

(3)Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. * * *"

Ga. Code Ann. § 81A-165(b)(2) provides in pertinent part:

"(2) The applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith in the clerk's office

and entered of record, and shall expire by its terms within such time after entry, not to exceed 30 days, as the court fixes, unless the party against whom the order is directed consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the motion of an interlocutory injunction shall be set down for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character; when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for for an interlocutory injunction; and if he does not do so, the court shall dissolve the temporary restraining order. * * *"

Restatement, Second, Contracts, § 235 provides in pertinent part:

"Effect of performance as Discharge

and of Nonperformance as breach.

(1) Full performance of a duty under a contract discharges the duty.

(2) When performance of a duty under a contract is due any nonperformance is a breach.

AFFIDAVIT OF SERVICE

I, Mickey Manuel, do hereby certify that I have this date served each and all counsel for the opposing party or parties in the foregoing matter with a true copy of Statement of Jurisdiction in support of my appeal to the United States Supreme Court by depositing said copies of same in the United States Mail with adequate postage thereon to assure delivery and addressed as follows:

White & Daum
1126 Ponce de Leon Ave., N.E.
Atlanta, Ga. 30306
ATTN: Larry White

Robert P. Witcher
819 Juniper St., N.E.
Atlanta, Ga. 30308

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 1987.

Mickey Manuel
P. O. Box 50847
Palo Alto, Ca. 94303
(415) 323-5847

Mickey Manuel